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Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 23rd January, 2006/Magha 3, 1927 (Saka)

THE NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS (AMENDMENT) ORDINANCE, 2006

No. 1 OF 2006

An Ordinance to amend the National Commission for Minority
Educational Institutions Act, 2004.

WHEREAS the National Commission for Minority Educational Institutions (Amendment) Bill, 2005 has been introduced in the Council of States but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and
commencement.

1. (1) This Ordinance may be called the National Commission for Minority Educational Institutions (Amendment) Ordinance, 2006.

(2) It shall come into force at once.

Amendment of
section 2.

2. In section 2 of the National Commission for Minority Educational Institutions Act, 2004 (hereinafter referred to as the principal Act),- 2 of 2005.

(i) in clause (a), the word "Scheduled" shall be omitted;

(ii) after clause (a), the following clause shall be inserted, namely:-

'(aa) "appropriate Government" means,-

(i) in relation to an educational institution recognised for conducting its programmes of studies under any Act of Parliament, the Central Government; and

(ii) in relation to any other educational institution recognised for conducting its programmes of studies under any State Act, a State Government in whose jurisdiction such institution is established;';

(iii) after clause (c), the following clause shall be inserted, namely:-

'(ca) "Competent authority" means the authority appointed by the appropriate Government to grant no objection certificate for the establishment of any educational institution of their choice by the minorities;';

(iv) after clause (d), the following clause shall be inserted, namely:-

'(da) "educational rights of minorities" means the rights of minorities to establish and administer educational institutions of their choice;';

(v) clause (j) shall be omitted.

Substitution of new
Chapter for Chapter
III.

3. For Chapter III of the principal Act, the following Chapter shall be substituted, namely:-

'CHAPTER III

RIGHT OF A MINORITY EDUCATIONAL INSTITUTION

Right to establish a

10. (1) Any person who desires to establish a Minority

Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.

Minority Educational Institution.

(2) The Competent authority shall,-

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant,

decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under sub-section (1) for the grant of no objection certificate,-

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate,

it shall be deemed that the Competent authority has granted a no object certificate to the applicant.

(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force.

Explanation.— For the purpose of this section,—

(a) “applicant” means any person who makes an application under sub-section (1) for establishment of a Minority Educational Institution;

(b) “no objection certificate” means a certificate stating therein, that the Competent authority has no objection for the establishment of a Minority Educational Institution.

10A. (1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

Right of a Minority Educational Institution to seek affiliation.

(2) Any person who is authorised in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations of the University.

Provided that such authorised person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.'

Amendment of
section 11.

4. In section 11 of the principal Act, for clauses (b) and (c), the following clauses shall be substituted, namely:-

"(b) enquire, *suo motu*, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;

(c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;

(d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;

(e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;

(f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

(g) make recommendations to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions; and

(h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission."

5. In section 12 of the principal Act,-Amendment of
section 12.

(a) in sub-section (1), the word "Scheduled" shall be omitted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

45 of 1860.

2 of 1974.

6. After section 12 of the principal Act, the following sections shall be inserted, namely: -Insertion of new
sections 12A to 12F.

'12A. (1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of section 10 by the Competent authority for establishing a Minority Educational Institution, may prefer an appeal against such order to the Commission.

Appeal against
orders of the
Competent
authority.

(2) An appeal under sub-section (1) shall be filed within thirty days from the date of the order referred to in sub-section (1) communicated to the applicant:

Provided that the Commission may entertain an appeal after expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

(5) An order made by the Commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908, so far as may be, shall apply as they apply in respect of a decree of a civil court.

5 of 1908.

12B. (1) Without prejudice to the provisions contained in the National Minority Commission Act, 1992, where an authority established by the Central Government or any State Government, as the case may be, for grant of minority status to any educational institution rejects the application for the grant of such status, the aggrieved person may appeal against such order of the authority to the Commission.

19 of 1992.

Power of the
Commission to
decide on the
minority status of an
educational
institution.

(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order communicated to the applicant:

Provided that the Commission may entertain an appeal after expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) On receipt of the appeal under sub-section (3), the Commission may, after giving the parties to the appeal, an opportunity of being heard, decide on the minority status of the educational institution and shall proceed to give such directions as it may deem fit and, all such directions shall be binding on the parties.

Explanation.— For the purposes of this section and section 12C, “authority” means any authority or officer or commission which is established under any law for the time being in force or under any order of the appropriate Government, for the purpose of granting a certificate of minority status to an educational institution.

Power to cancel.

12C. The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by any authority or Commission, as the case may be, cancel such status under the following circumstances, namely:—

(a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose, or character of a Minority Educational Institution;

(b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.

Power of Commission to investigate matters relating to deprivation of educational rights of minorities.

12D. (1) The Commission shall have the power to investigate into the complaints relating to deprivation of the educational rights of minorities.

(2) The Commission may, for the purpose of conducting any investigation pertaining to a complaint under this Act, utilize the services of any officer of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(3) For the purpose of investigation under sub-section (1), the officer whose services are utilized may, subject to the direction and control of the Commission,-

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(4) The officer whose services are utilized under sub-section (2) shall investigate into any matter entrusted to it by the Commission and submit a report thereon to it within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such further inquiry as it may think fit.

12E. (1) The Commission, while enquiring into the complaints of violation or deprivation of educational rights of minorities shall call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto, within such time as may be specified by it:

Power of
Commission to call
for information, etc.

Provided that,-

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required, or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

(2) Where the inquiry establishes violation or deprivation of the educational rights of the minorities by a public servant, the Commission may recommend to the concerned Government or authority, the initiation of disciplinary proceedings or such other action against the concerned person or persons as may be deemed fit.

(3) The Commission shall send a copy of the inquiry report, together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further

time as the Commission may allow, forward its comments on the report, including the action taken, or proposed to be taken thereon, to the Commission.

(4) The Commission shall publish its inquiry report and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

Bar of
jurisdiction.

12F. No court (except the Supreme Court and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) shall entertain any suit, application or other proceedings in respect of any order made under this Chapter.”

Omission of
section 18.

7. Section 18 of the principal Act shall be omitted.

Amendment
of section 24.

8. In section 24 of the principal Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:-

“(aa) the forms in which appeal under sub-section (3) of section 12A and sub-section (3) of section 12B shall be made;”.

Omission
of Schedule.

9. The Schedule to the principal Act shall be omitted.

A.P.J. ABDUL KALAM,
President.

T.K. VISWANATHAN,
Secy. to the Govt. of India.